



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 10**

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OFFICE OF  
ECOSYSTEMS, TRIBAL AND  
PUBLIC AFFAIRS

November 5, 2010

Sophia Millar  
Wallowa Mountains Office  
Wallowa-Whitman National Forest  
88401 Highway 82  
Enterprise, Oregon 97828

Re: EPA Region 10 Comments on the North Fork Burnt River Supplemental Draft  
Environmental Impact Statement (SDEIS).  
EPA Project Number 10-048-AFS

Dear Ms. Millar:

The U.S. Environmental Protection Agency (EPA) has reviewed the SDEIS for placer mine proposals in the North Fork Burnt River (NFBR) Watershed in the Whitman Ranger District of the Wallowa-Whitman National Forest, Baker County, Oregon. Our review of the SDEIS was conducted in accordance with our responsibilities under National Environmental Policy Act (NEPA) and Section 309 of the Clean Air Act.

The SDEIS analyzes the environmental effects of 42 Plans of Operations for mines on approximately 106,500 acres. The supplemental analysis was developed in response to a U.S. District Court of Oregon opinion and order based on a complaint filed claiming that there were deficiencies with the 2004 final EIS. The issues were related to 401 certification and consistency with the Forest Plan and INFISH standards. The SDEIS clearly describes the issues raised to the Court and addresses them. The document is well organized and provides useful information in the Appendices and relevant INFISH standards in addition to references to the Forest Plan.

Our concerns with the SDEIS relate to water quality in the project area. These include concerns with impaired streams, road density in the NFBR, in-stream activities, settling ponds, uncertainties regarding mine activities in abandoned mine adits, potential existing contamination from mine adits, and reclamation and financial assurance. Based on our review we have rated the SDEIS EC-2 (Environmental Concerns – Insufficient Information). Our detailed comments are attached for your consideration in developing the final supplemental EIS.

We appreciate the communication underway between our agencies about this project and we would like to take you up on the offer to follow up on our questions and concerns prior to development of the supplemental final EIS. Thank you for the opportunity to review this SDEIS. We look forward to continued discussions with you and/or the hydrologist on your team. Please contact Lynne McWhorter of my staff at 206-553-0202 or via email at [mcwhorter.lynne@epa.gov](mailto:mcwhorter.lynne@epa.gov).

Sincerely,



Christine B. Reichgott, Unit Manager  
Environmental Review and Sediment Management Unit

Enclosures

## **EPA Comments on North Fork Burnt River Mine Supplemental Draft Environmental Impact Statement (SDEIS)**

### **Roads**

#### **Coordination with State 401 Certification**

One of the major components of this analysis relates to mining claim access. This includes analysis of impacts from roads and the proposal for additional roads and stream crossings/fords. All of these activities can result in discharge of sediment to Waters of the U.S. and should be coordinated with the State of Oregon to ensure that approvals are protective and appropriate measures are in place to avoid impacts. The SDEIS notes that the Forest Service has consulted with Oregon Department of Environmental Quality (ODEQ) and we acknowledge the addition of Appendix 1A, which discloses potential discharges. It appears that there is only one identified due to the proximity of proposed road to the stream. We recommend including information on the timing of the 401 certification and additional requirements for any discharges since approval of plans can not occur until certification has been secured.

#### **Road Closures**

The SDEIS discusses the need to amend the Forest Plan to increase open road density in five Management Areas to accommodate access to mine claims. It also states that roads related to mines would be temporary so this amendment would be insignificant. We are unclear if these roads would be closed but continue to exist or be decommissioned. Unless decommissioned, closed roads can contribute sediment to streams and the NFBR and four other streams in the project area are listed as water quality impaired for sediment. Appendix 1B includes a table that lists information on closure and decommissions; however, they are lumped together. It would be helpful to clarify how many roads would be decommissioned and why they were selected. We support decommissioning roads and reestablishing vegetation to reduce erosion and protect water quality. We recommend that the EIS provide additional detail on the closure plan and road decommissioning.

#### **Open Road Density**

We believe that the NFBR watershed has a high density of roads compared to other watersheds (465.97 open road miles and 4.88 road density<sup>1</sup>) and 1200 miles of roads provide access to active mining claims. The density of roads causes habitat fragmentation and can cumulatively increase sediment in streams. Road maintenance activities are often key in reducing sediment loads. We acknowledge that the SDEIS states that approximately only 1.6% of 5 tons/sq.mil/year of sediment is from roads. Although this may seem minimal, we are concerned those additional roads could discharge sediment (i.e., Burnt Lode/Placer 3), that the condition of existing roads could deteriorate, and that cumulative impacts of other projects could exacerbate the situation. We also note that plans for the Forest propose additional roads. We are unclear if this cumulative effect could have a greater potential for sediment delivery in an already impaired watershed and how this complies with anti-degradation provisions<sup>2</sup>. The EIS should discuss other activities in the watershed that would result in additional roads, how these affect water quality, and details of a road maintenance plan.

#### **Stream Crossings/Fords**

<sup>1</sup> Wallowa-Whitman National Forest Travel Management Plan Draft EIS (2009)

<sup>2</sup> CWA Section 313, 33 U.S.C § 1323(a)

The measure most used in the analysis related to roads and potential impacts is open road density. We believe that it is equally important to understand effects of roads based on juxtaposition in watersheds with respect to sensitive habitats and water resources. The SDEIS indicates that there will be five additional fords and multiple stream crossings. We are concerned about stream crossings that have potential to disturb the stream substrate and cause bank erosion from transport in-stream. We understand that rocks may be placed in areas where fords will occur. We are unclear if placement of rocks in streams would require a Corps' of Engineers 404 permit. In the event that a Corps permit is required for any activities (stream crossings and any activities in wetlands related to other activities) in Waters of the U.S., the EIS should discuss this coordination and how the project will comply with the 404(b)(1) guidelines and three tiered analysis to first avoid of impacts, second minimize impacts, and last compensate for impacts. We also recommend that bridges be used whenever possible to avoid stream fords.

### **Settling Ponds**

The SDEIS includes construction of settling ponds for a number of the Plans of Operation and Appendix 5 discloses the operations that include ponds. We are concerned that some of these ponds are in Riparian Habitat Conservation Areas (RHCAs) and near wetlands and streams. As previously stated, three streams in the project area are listed as impaired for sediment and five streams are listed for temperature. We are concerned about settling ponds being constructed in RHCAs and the resulting potential loss of vegetation, increased sediment delivery, and increased temperature in streams. We are unclear about whether the design of these ponds took heavy precipitation events into account to ensure that the settling ponds would be stable, so that they would not be breached and cause a discharge to surface waters. We recommend that the final EIS provide details of the design requirements for settling ponds and minimize locating ponds in areas where contamination of surface water could result in the event of failure.

### **Abandoned Mine Adits**

Multiple proposals include placer mining of underground mine portals (e.g., Jay Gould Mine Works, Monarch LD, Roberts LD). The SDEIS discusses contaminants of concern (COC), the human health and aquatic organism standards for COCs, and the analytical results of water chemistry for operators that intend to either use the water from the adit or open the adit. In a number of cases the adit water exceeded the standard for human health and/or aquatic organisms. We are very concerned with activities occurring in contaminated sites and believe that proper clean up of sites should occur. The document should clarify if the operator would be responsible for clean up actions once activities commence in areas that are contaminated (have they caused further contamination and release of COCs?). The document notes that these waters do not contain fish and are not a source of drinking water. However, the document also notes that some of the discharges go underground and then are expressed in nearby springs. It would be helpful to better understand whether or not these discharges are reaching waters with designated beneficial uses and what the ramifications of activities in contaminated sites would be. The EIS should further discuss the impacts and regulatory framework around this activity.

**Reclamation and Financial Assurance**

There are many historic placer mines/suction dredge operations throughout the NW that were not reclaimed and vegetation has still not established on spent tailings after decades. Therefore, we believe that reclamation is critical to promote site rehabilitation and restore ecosystem processes. The SDEIS does not provide adequate detail of site reclamation requirements or design. Appendix 2 includes Requirement G2, which states that site-specific reclamation bonds may be required to ensure reclamation takes place. We strongly support financial assurance requirements and recommend that all Plans of Operations include a bond for site reclamation since all of the proposals include surface disturbance. The EIS should discuss the bonding mechanism, what activities would be covered, and benchmarks for bond release. The EIS should also provide information about the details of reclamation design and requirements.

**U.S. Environmental Protection Agency Rating System for  
Draft Environmental Impact Statements  
Definitions and Follow-Up Action\***

**Environmental Impact of the Action**

**LO – Lack of Objections**

The U.S. Environmental Protection Agency (EPA) review has not identified any potential environmental impacts requiring substantive changes to the proposal. The review may have disclosed opportunities for application of mitigation measures that could be accomplished with no more than minor changes to the proposal.

**EC – Environmental Concerns**

EPA review has identified environmental impacts that should be avoided in order to fully protect the environment. Corrective measures may require changes to the preferred alternative or application of mitigation measures that can reduce these impacts.

**EO – Environmental Objections**

EPA review has identified significant environmental impacts that should be avoided in order to provide adequate protection for the environment. Corrective measures may require substantial changes to the preferred alternative or consideration of some other project alternative (including the no-action alternative or a new alternative). EPA intends to work with the lead agency to reduce these impacts.

**EU – Environmentally Unsatisfactory**

EPA review has identified adverse environmental impacts that are of sufficient magnitude that they are unsatisfactory from the standpoint of public health or welfare or environmental quality. EPA intends to work with the lead agency to reduce these impacts. If the potential unsatisfactory impacts are not corrected at the final EIS stage, this proposal will be recommended for referral to the Council on Environmental Quality (CEQ).

**Adequacy of the Impact Statement**

**Category 1 – Adequate**

EPA believes the draft EIS adequately sets forth the environmental impact(s) of the preferred alternative and those of the alternatives reasonably available to the project or action. No further analysis of data collection is necessary, but the reviewer may suggest the addition of clarifying language or information.

**Category 2 – Insufficient Information**

The draft EIS does not contain sufficient information for EPA to fully assess environmental impacts that should be avoided in order to fully protect the environment, or the EPA reviewer has identified new reasonably available alternatives that are within the spectrum of alternatives analyzed in the draft EIS, which could reduce the environmental impacts of the action. The identified additional information, data, analyses or discussion should be included in the final EIS.

**Category 3 – Inadequate**

EPA does not believe that the draft EIS adequately assesses potentially significant environmental impacts of the action, or the EPA reviewer has identified new, reasonably available alternatives that are outside of the spectrum of alternatives analyzed in the draft EIS, which should be analyzed in order to reduce the potentially significant environmental impacts. EPA believes that the identified additional information, data, analyses, or discussions are of such a magnitude that they should have full public review at a draft stage. EPA does not believe that the draft EIS is adequate for the purposes of the National Environmental Policy Act and or Section 309 review, and thus should be formally revised and made available for public comment in a supplemental or revised draft EIS. On the basis of the potential significant impacts involved, this proposal could be a candidate for referral to the CEQ.

\* From EPA Manual 1640 Policy and Procedures for the Review of Federal Actions Impacting the Environment. February, 1987.